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In re Application of: Park, et al.
Appl. No.: 10/669,747
Filed: 25 September 2003
For: A Packing Crate

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: DECISIONS ON PETITIONS
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This is responsive to the petitions filed on July 24, 2006 by which petitioners request supervisory review and withdrawal of the restriction requirement rendered in paper No. 20060515 mailed May 18, 2006. In accordance with 37 CFR 1.144, an applicant may petition the Director to review a final requirement for restriction. Although this restriction requirement has not been made final, in order to expedite the prosecution of this case, this petition is being considered as if pursuant to 37 CFR 1.144 and 37 CFR 1.181, and no fee is required.

The petition is granted.

The undersigned is fully aware of the petition filed by Applicant on November 1, 2005, which was granted on February 17, 2006. Response to this petition is made in light of the issues resolved in the previous petition.

Aside from the fact that it is presumed that the Examiner has made a thorough search and examination of all the originally submitted claims, which encompassed the disclosed product and method of making the product, the rationale rendered in justifying restriction in paper No. 20060515 cannot be maintained.

In showing distinctness between the method of making claims 7-9 and the product claims 22-37, the Examiner states, "the method claim require a folding over the strip at an edge of the stack of paper while the article claims does not require this step thus making the inventions I and II distinct". Quite to the contrary, article claims 28 and 29 do require the "folded over strip" feature. The Examiner further states, "the container can be made by other method like immersing the threads with adhesive prior to sewing". However, the Examiner has not provided any further convincing reasoning of how immersing the threads in adhesive prior to sewing would result in the package crate as set forth in the claims.

As stated in the response to Applicants' previous petition, by rendering a first Office action on all the claims it is presumed that the Examiner performed a thorough search in all the appropriate areas. Since the latest restriction requirement again makes no indication on the record of how a serious burden exists by having to examine all the claims, the Examiner again has not met the requirements for making a restriction in this case. The Examiner merely states that the inventions have acquired a separate status in the art in view of their different classification. The title of class 493, subclass 84 where the examiner classified the method claims is "Container making –

assembling distinct members". This and other subclasses (e.g., 121, 136 and particularly 140) appear to be very pertinent searches in determining the patentability of the method as well as the product claims. For this reason and those discussed supra, the restriction requirement is improper and will be withdrawn.

For the reasons outlined above, the restriction requirement rendered in paper No. 20060515 is not in accordance with proper Office procedure and hereby vacated.

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3727 who will have the Examiner promulgate an action on the merits of all of the presently pending claims not inconsistent with this Decision.

PETITION GRANTED



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